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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,896	02/24/2004	Shicai Liu	BGB 04-1-1	6728
23531 7590 10/03/2008 SUTTER SWANTZ PC LLO 14301 FNB PARKWAY SUITE 220 OMAHA, NE 68154				
EXAMINER				
BADR, HAMID R				
ART UNIT		PAPER NUMBER		
1794				
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10/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/786,896

Applicant(s)

LIU ET AL.

Examiner

HAMID R. BADR

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Applicants' amendments filed on 6/24/2008 is acknowledged.

Claims 1-19 and 24-26 are being considered on the merits.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants have amended the claims to recite "mechanically" defatting the animal peltry. As support for this change, applicants point to page 6, paragraph 13 of the present specification. However, while this discloses specific type of mechanical defatting, i.e. defatting via a plane, this does not provide support for the broad recitation of "mechanically" defatting which includes all types of mechanical defatting for which there is no support in the specification as originally filed.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. In the above claims the words or phrases: "waterish", "knitting", "itenerating reagent", "smash pieces", "grainy animal peltry molding", "shares", "dry grainy", "glutin", "emending color reagent", "true color waterish animal peltry" and "homemade sucrose" are ambiguous and consequently make the claims indefinite. It is unclear what the applicant means by, for instance, "waterish" or the word "glutin" is ambiguous since it could either mean gluten, being of plant origin, or gelatin being of animal origin.
6. The examiner is taking the position to interpret "waterish" as wet, "itenerating reagent" as a softening reagent such as a tenderizer or a proteolytic enzyme, "smash pieces" as shredded pieces, "shares" as parts, "glutin" as wheat gluten, "emending agent" as bleaching agent.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 24-26 are rejected under 35 U.S.C. 103(a) being unpatentable over Kerres (US 4,270,464) in view of Isenberg (US 4,029,004).

9. Kerres discloses details of a smoke generator and method for smoking food products such as meat, sausage and fish using sawdust (Abstract).
10. Kerres teaches how to generate smoke using sawdust in a chamber which includes sawdust feeding device, heating means to ignite the sawdust, means for supplying fresh air into the smoke generating chamber and duct means for exhausting the smoke produced in the chamber and for feeding the smoke to a smokehouse (Col. 1, lines 45-62).
11. It is obvious to design a smoker cabinet resembling what is disclosed by the cited reference by any dimensions that may be desired.
12. Kerres is silent regarding the racks for holding the materials to be smoked.
13. Isenberg discloses an improved rack used for smoking meat (Abstract).
14. His rack comprises a frame, spring like brackets on said frame for supporting shelves, pan means on said frame to collect draining liquids from meat (Abstract).
15. He discloses the features of the rack in the form of a trolley having a support bracket having inverted J-shaped arms, journaling wheels which roll on rail (Col. 2, line 37-col.3, line 50)
16. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the teachings of Kerres and using the rack features of Isenberg to make a smoke stove of the instant application for smoking the pet product. Absent any evidence to contrary and based on the teachings of the cited references, there would have been a reasonable expectation of success in designing such a smoking stove.

Response to Arguments

Applicants' arguments have been thoroughly reviewed.

A. Regarding the 112 second paragraph rejections, Applicants argue that they can be entitled to be their lexicographer.

a. It is true that the applicant is entitled to be his or her own lexicographer. However, the words or phrases used by the applicants either do not have definite meaning or make the claims indefinite. For instance: "waterish" could mean "somewhat watery", or "surrounded by water" or "having the fluidity of water" or even "wishy washy". Therefore it makes the claim indefinite. "smash pieces" could mean "smashed pieces" or "cut into small pieces" or possibly smashed into a mass (like a dough). "grainy animal peltry molding" does not hold a definite meaning. "glutin" could either mean gluten (from plants) or gelatin (from animals). "true color waterish animal peltry" does not have a definite meaning in the claim. "homemade sucrose" ambiguous since it has not been defined in the specification. These words or phrases make the claims indefinite. Therefore, it is not the matter of being one's own lexicographer, but rather the definiteness of such words or phrases are not clear.

B. It is noted that with respect to the word "mechanically", which is not supported by the specification. The word "plane" which is used in paragraph [0013] of the instant specification, is too vague. It does not direct one of skill in the art how to do the defatting process which in turn raises lack of description issues. On the other hand if "plane" is meant to be a "mechanical defatting", why does claim 8 has the limitation of

"degreasing-reagent" and a composition for making such a reagent indicating that a chemical defatting is involved.

C. Regarding the 103 rejection of claims 24, Applicants argue that there is no motivation to combine Kerres with Isenberg.

a. Applicants admit that Kerres teaches of a structure which can be used for smoking food products which are placed within the chamber. The only problem is that it does not provide shelves as presently claimed. On the other hand, Isenberg teaches a portable rack device which contains a plurality of shelves upon which meat can be placed. Applicant, further admit that the rack can be relocated to various stations within a smoke house/meat curing facility such as to a loading station, a cooling area or a smoke room. It is obvious that if shelves can be used to hold pieces of meat to be smoked in a smoke room, they can be put directly into the chamber designed by Kerres which is also used for the same purpose of smoking food product. What is important is the idea of the usefulness of shelves in a smoke room, which is clearly taught by Isenberg. As a result, claim 24 is also obvious to one skill in the art.

b. Applicants argue that using the device of Isenberg within the chamber of Kerres would nullify its advantages. However, given that Isenberg explicitly discloses that one of the advantages of using the shelves is that the shelves can be used in a smoke room, given that using such shelves in the smoke room would not exclude the shelves from subsequently being moved to other stations, and given that there is nothing in the scope of present claims 24-26 that excludes using movable shelves, it is the examiner's

position that the combination of Kerres with Isenberg remains relevant against the present claims.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **HAMID R. BADR** whose telephone number is (571)270-3455. The examiner can normally be reached on M-T 5:00 to 3:30 (Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R Badr
Examiner
Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794